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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

NO. 289184 – III

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OF THE STATE OF WASHINGTON

MARIA RICCIARDELLI (FKA BRO),

Respondent,

vs.

THOMAS ILMAR BRO,

Appellant.

RESPONSE BRIEF OF RESPONDENT

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4 **I. Introduction**

5 Although Appellant and Respondent have an equally divided parenting
6 plan, the Appellant is not entitled as a matter of law to a residential credit or
7 deviation.
8
9

10 In fact, it is well settled law that deviations are within the discretion of the
11 trial court and/or court commissioners.
12

13 The Appellant cannot simply make a claim that failure to treat a
14 residential credit as an entitlement, absent authority, constitutes abuse of
15 discretion.
16
17

18 There is and was an obligor in the Bro case in 2007 and 2009. The obligor
19 was and is the Appellant.
20
21

22 Child support, as a matter of policy, aims to economically equalize
23 households. Appropriate child support to that aim is to be determined by the trial
24 court.
25
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27 The poverty guidelines are no longer the standard but \$1,128.00, the self
28 support reserve. In the case at bar, the court properly reserved the statutory
29 amount.
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3 The obligor was imputed at \$1,450.00 child support was determined
4 \$219.50 leaving \$1,231.00 well within the self support reserve.
5
6

7 **II. Assignment of Error**

8 A. Designating Mr. Bro as “obligor” was not an error. In 2007, Mr.
9 Bro agreed to be the obligor and continued in 2010. The commissioner further
10 found Appellant was underemployed, purposefully choosing to be under
11 employed in order to make the very claim that he should not be the obligor.
12
13
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16 **III. Statement of the Case**

17 The net monthly income of Maria Riccardelli has not waived since
18 2007. She continues to earn the same \$1,367.00 a month NET pay. She is the
19 obligee for their 5 and 3 year old children, and has been since 2007. By contrast
20 the Appellant does not work and has never worked a total of 40 hours per week
21 consistently. He was found to be purposefully under employed. He admittedly
22 has financial resources available. His parents fund his child support obligation
23 as they fund his attorneys’ fees in this action and on appeal (CP 128-133, 51-54,
24 CP 19-44).
25
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31 Ms. Bro, aka Riccardelli, submitted her bank records demonstrating
32 financially how closely she comes each month to not being able to pay for rent,
33

1
2
3 food, or clothing (CP 117-120). The Appellant submitted nothing to document
4 his financial hardship.
5

6
7 In fact, he admitted to having financial resources (parents), a resource Ms.
8 Bro certainly does not have.
9

10 In ruling on Mr. Bro's motion for modification, the court did not find
11 parties income substantially the same (CP 55-61). In fact, it found Mr. Bro to be
12 underemployed and imputed him at \$1,450.00 per month (CP 55-61, 108-110).
13

14
15 Mr. Bro's request to deviate from the standard calculation was divided in
16 part due to the underemployment finding. The court was persuaded by Ms. Bro's
17 argument that underemployment was specifically purposeful so that Appellant
18 could be relieved from his Child Support obligation.
19
20

21
22 The Commissioner further pointed out, in dictation, that deviation as a
23 matter of policy should be given sparingly. She made no finding that they were
24 impermissible (CP 106-114).
25
26

27 IV. Argument

28
29 The trial court did not abuse its discretion in naming Mr. Bro the
30 "obligor". Mr. Bro was the obligor in the original Child Support Order in 2007.
31
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4 The court found him underemployed and imputed income to the Appellant
5 and found him to have financial resources. Further, the Appellant failed to
6
7 submit any documentation proving any severe hardship. None of these findings
8
9 constitute an abuse of discretion.

10 A deviation from the standard calculation is not mandatory. The court
11
12 “may” deviate from the standard calculation on the basis of time spent with the
13
14 noncustodial parent.

15 The Appellant presents RCW 26.19.035 (2) as if the deviation was
16
17 mandatory versus discretionary.

18 Child support in this matter complies with RCW 26.19.035 (2), RCW
19
20 26.19.071, RCW 26.19.020, RCW 26.19.080.

21
22 Written finding supported by the evidence were entered. The matter was
23
24 reviewed by the Commissioner and not reconsidered. Reviewed by the trial
25
26 court and not revised.

27 Mrs. Bro has spent \$5,222.00 in attorney’s fees.

28
29 Appellant cites Holmes, 128 Wn App at 738, 117 p:3d at 375 as authority
30
31 for assigning error to the trial court for naming noncustodial father the obligor.

32 A careful review of Holmes in fact states the contrary.

33
34 RESPONSE BRIEF OF RESPONDENT

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4 In Holmes the child resided the majority of the time with the father versus
5 the mother. The Bro case is not the same. Both Children reside with mother and
6 have 50% visitation with father. The Bro parenting schedule does not resemble
7 Holmes in anyway.
8
9

10 The court found the children in the Bro home needed greater support than
11 in the home of the non-residential parent. This was based on Ms. Riccardelli's
12 financial declaration and bank statements.
13
14

15 Mr. Bro's income was imputed due to his underemployment. Therefore
16 there was no substantially change in his net earnings.
17
18

19
20 Federal Poverty Guideline Analysis

21 Appellant, in large part, relies on the Federal Poverty Guideline analysis
22 which has been abandoned in favor of the 1.12 Self Support Reserve analysis.
23
24

25 Support in Bro does not offend the Federal Reserve of \$1128.00.
26

27 V. Conclusion

28
29 Ms. Bro (Riccardelli) respectfully requests the court affirm the trial
30 court's decision and order Mr. Bro to pay \$5,000.00 of her attorney's fees for
31 defending this modification on appeal.
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Dated this 4th day of October, 2010.

Respectfully submitted by:
GINA M. COSTELLO
ATTORNEY AT LAW

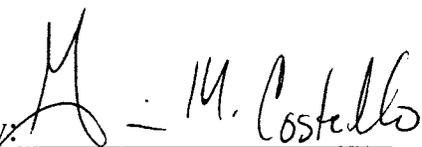
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TABLE OF AUTHORITIES

RCW 26.19.035 (2).....4
RCW 26.19.071.....4
RCW 26.19.020.....4
RCW 26.19.080.....4
Holmes, 128 Wn App at 738, 117 p:3d.....4